

Exhibit B

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. CR 10-1031(A)-AHM
)	
Plaintiff,	)	DEFENDANTS' NOTICE OF
	)	MOTION AND MOTION TO
v.	)	DISMISS THE FIRST
	)	SUPERSEDING INDICTMENT
ENRIQUE FAUSTINO AGUILAR	)	FOR VIOLATIONS OF <i>BRADY V.</i>
NORIEGA, ANGELA MARIA	)	MARYLAND OR, IN THE
GOMEZ AGUILAR, LINDSEY	)	ALTERNATIVE, FOR
MANUFACTURING COMPANY,	)	SANCTIONS; EXHIBITS
KEITH E. LINDSEY and)	
STEVE K. LEE,)	
)	
Defendants.	)	Date: March 28, 2011
	)	Time: 3:00 p.m.
	)	Place: Courtroom 14
)	

MOTION TO DISMISS FIRST SUPERSEDING INDICTMENT FOR VIOLATIONS OF
BRADY V. MARYLAND, OR IN THE ALTERNATIVE, FOR SANCTIONS

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1 TO: UNITED STATES ATTORNEY ANDRÉ BIROTTE JR., ASSISTANT
2 UNITED STATES ATTORNEY DOUGLAS M. MILLER, AND UNITED
3 STATES DEPARTMENT OF JUSTICE SENIOR TRIAL ATTORNEY NICOLA
4 J. MRAZEK:

5 PLEASE TAKE NOTICE that on Monday, March 28, 2011 at 3:00 p.m., or
6 as soon thereafter as the matter may be heard, in the Courtroom of the Honorable
7 A. Howard Matz, defendants Lindsey Manufacturing Company, Keith E. Lindsey,
8 and Steve K. Lee, by and through their counsel of record, will move to dismiss the
9 First Superseding Indictment for violations of *Brady v. Maryland*, 373 U.S. 83
10 (1963), or in the alternative, for sanctions.

11 This motion is based on the accompanying Memorandum of Points and
12 Authorities, attached exhibits, all files and records in this case, and any such
13 arguments and evidence as may be presented at or before the hearing on this
14 Motion.

15
16 DATED: March 22, 2011

Respectfully submitted,

17 JANET I. LEVINE
18 CROWELL & MORING LLP

19 By: /s/ Janet I. Levine
20 JANET I. LEVINE
21 Attorneys for Defendant
Steve K. Lee

22 DATED: March 22, 2011

JAN L. HANDZLIK
GREENBERG TRAURIG LLP

24
25 By: /s/ Jan L. Handzlik
26 Attorneys for Defendants
27 Lindsey Manufacturing Company and
Keith E. Lindsey

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The government's purposeful suppression of materials subject to *Brady v. Maryland*, 373 U.S. 83 (1963) warrants dismissal of the First Superseding Indictment ("FSI").

A. The Internal Revenue Service Interview Memorandum, the Comisión Federal de Electricidad Spreadsheets and PowerPoint Presentations

On February 11, 2011, government prosecutors Douglas M. Miller, Nicola J. Mrazek and Jeffrey Goldberg met for seven-and-one-half hours with:

- Lic. Fernando Bueno Montalvo, Director de Administracion – Comisión Federal de Electricidad ("CFE")
- Lic. Abel Huitron Rosete, Abogado General – CFE
- Lic. Mariano Ornelas Lopez, Direccion de Administracion – CFE
- Oswaldo Parra Lira, PGR
- Jaime Ortiz, Regaional Attache – PGR
- Rodolfo Mendoza, Special Agent
- Farrell Binder, Special Agent – FBI
- Elizabeth Sebeski, Paralegal Specialist – DOJ
- Sharon Spence, Court Interpreter
- Elisa Cabal, Court Interpreter

See Exhibit A, Internal Revenue Service ("IRS") Criminal Investigation Division ("CID") Memorandum of Contact, drafted by Special Agent Rodolfo Mendoza ("Mendoza Memo").

The purpose of the meeting was to interview the three representatives of CFE. The number of attendees at the interview and their titles alone – including all three prosecutors – as well as the length of the interviews suggest the importance

1 of the meeting. The general counsel of CFE, Abel Huitron Rosete, was one of the
2 CFE representatives present.

3 A one-and-one-half page memorandum of this seven-and-one-half hour
4 interview was prepared by IRS CID Special Agent Rodolfo Mendoza. Other than
5 the date upon which the interviews took place, February 11th, Agent Mendoza's
6 report is undated. It consists of six numbered paragraphs. This memorandum was
7 not furnished to defense counsel until Saturday, March 19, 2011, over five weeks
8 after the interview took place.

9 The CFE representatives came to the meeting prepared to engage in a
10 discussion about the relationship between CFE and Lindsey Manufacturing
11 Company ("LMC").¹ They brought with them spreadsheets detailing at least 35
12 contracts between LMC and CFE. They also brought PowerPoint presentations
13 providing generic background information about CFE and the process by which it
14 contracts with outside vendors and suppliers. Both the spreadsheets and
15 PowerPoint presentation were in Spanish. The PowerPoints made no mention of
16 LMC or Grupo Internacional De Asesores S.A. ("Grupo").

17 With three exceptions, these spreadsheets detail CFE-LMC contracts from
18 2002 to 2009. This is the period during which Enrique Aguilar, through his
19 company Grupo, acted as LMC's independent sales representative. Two contracts
20 from before that time period, one each from 1996 and 2000, are shown on one of
21

22 ///

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24
25 ¹ The detailed nature of the presentations, including the preparation in
26 advance of the spreadsheets and generic PowerPoint presentation, and the
27 comprehensive nature of the subject matter discussed suggest that discussions may
28 have preceded the February 11th meeting. No information about earlier
communications with CFE in this regard has been provided.

the spreadsheets.² One CFE-LMC contract post-dating the Enrique Aguilar relationship with LMC, from September 2009, was also included.

B. Whether Awarded by Bid or Direct Order, Nothing Was Out-of-Order with LMC's Contracts with CFE, and The Contracts Conformed with CFE Contracting Requirements

The spreadsheets summarize 35 contracts between CFE and LMC, including every contract listed in Agent Binder's Affidavit in support of the November 14, 2008 Search Warrant for LMC and Lindsey International, and which form the basis for the charges in the First Superseding Indictment ("FSI"). The spreadsheets reflect that 34 of the 35 contracts conformed with CFE contracting processes.³

Moreover, 25 of the 35 contracts on the spreadsheets were "direct purchases" or "direct orders," *see* Exhibit A, Mendoza Memo at ¶ 3, meaning the bidding process was bypassed. The Mendoza memorandum of the interview states that, "[i]n order to have a direct purchase there has to be a justification." *See* Exhibit A, Mendoza Memo at ¶ 4. According to Agent Mendoza, the CFE representatives interviewed said that a "special" CFE committee must authorize these sorts of contracts. These contracts could have been authorized by a central

² Since LMC had numerous Emergency Restoration System ("ERS") related contracts with CFE starting in at least 1991, the inclusion of only two contracts from that period is puzzling. In fact, CFE and LMC entered into at least nine contracts with a combined value of approximately \$8,857,437.19 during the period 1991 through 2001, all before Mr. Aguilar began representing LMC.

³ Agent Mendoza's undated report of the interviews indicates the CFE representatives identified a "discrepancy" with one of the CFE-LMC contracts. *See* Exhibit A, Mendoza Memo at ¶ 6. Apparently, this one contract was non-conforming, because Enrique Aguilar's company, Maquinaria Unida, was also listed as one of the bidders along with LMC. *See* Exhibit A, Mendoza Memo at ¶ 6.

1 committee or by one of “forty regional committees.” *See* Exhibit A, Mendoza
2 Memo at ¶ 4.

3 The Mendoza memorandum goes on to state that “[t]he direct order
4 authorizations for Lindsey Manufacturing came from the regional committees.”
5 *See* Exhibit A, Mendoza Memo at ¶ 4. This means that the vast majority of the 32
6 contracts between CFE and LMC during the period when Mr. Aguilar was LMC’s
7 independent sales representative (and charged as corrupt in the FSI) were
8 authorized as justified by one of 40 regional committees, not by a central CFE
9 committee at its headquarters.⁴ This alone raises a reasonable doubt as to the
10 purported corrupt nature of these contracts.

11 Moreover, with respect to all but one of the 35 CFE-LMC contracts
12 identified in their spreadsheets and discussed in their day-long interview on
13 February 11th, the CFE representatives “indicated that the Lindsey Manufacturing
14 contracts did not trigger any suspicion from CFE because at face value nothing
15 seemed out of order with the contracts.” *See* Exhibit A, Mendoza Memo at ¶ 5.
16 This is evidence that directly refutes the government’s key allegations. It should
17 have been provided to the defense immediately.

18 **C. The Government’s February 15, 2011 Witness List**

19 As noted, the six-paragraph Mendoza memorandum purports to memorialize
20 the interview of the three CFE representatives held throughout the business day of
21 February 11, 2011. The information provided by the three CFE representatives to
22

23 ⁴ An examination of the spreadsheets, in Spanish, also confirms that most of
24 these contracts were for spare parts. This serves to confirm that several of the 40
25 CFE regions contracted directly with LMC to replace parts, including towers, from
26 the ERS systems previously sold to them by LMC that had been stored at staging
27 locations in these regions for use after the inevitable hurricanes and other disasters.
28 By way of example, if you need spare parts for a Chrysler, you would not seek bids
from Honda or Ford.

three federal prosecutors, two federal law enforcement agents and one Department of Justice (“DOJ”) paralegal is classic exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963). It should have been provided to the defense immediately, on February 11th or 12th. Instead, the prosecutors waited over five weeks – until just ten days before trial – to produce this exculpatory information.

The Mendoza memorandum coupled with the Spanish-language spreadsheets goes to the heart of the allegations in the FSI. Instead of fulfilling their obligations under *Brady*, the prosecutors engaged in subterfuge. On February 15th, four days after interviewing the three CFE representatives, the government produced its witness list as required by the Court. The names of two of the three CFE representatives interviewed on February 11th, Abel Huitron Rosete and Mariano Ornelas Lopez, appear on the witness list; they were not identified as employees or representatives of CFE. They thus appeared in an undifferentiated fashion along with the approximately 78 prospective government witnesses on the list.

Although the government had interviewed Mr. Huitron Rosete and Mr. Ornelas Lopez four days before filing its witness list, it produced no witness statements for them. This violated a pledge made by the government to the Court to produce evidence as it became available and, if necessary, explain the delay in production to the Court. *See Exhibit B, United States v. Noriega, et al.*, Transcript of Hearing on December 14, 2010 (“Dec. 14, 2010 Tr.”), p. 41, line 22, through p. 43, line 3. Thus, these two CFE representatives appeared to be two of several witnesses the government had put on the list without having interviewed them first. No revelation was made of the favorable evidence these two witnesses possessed and had just provided to the government.

D. The Government’s February 15, 2011 Discovery Production

The government devoted considerable attention to the materials furnished to it by the three CFE representatives on February 11th. It made another discovery

1 production of various materials on February 15th. *See* Exhibit C, Letter from
 2 Douglas M. Miller to defense counsel, dated Feb. 15, 2011 (“Feb. 15, 2011 letter”).
 3 It produced the Spanish-language spreadsheets and the generic CFE PowerPoint in
 4 an undifferentiated fashion, in the middle of over 100,000 pages of other materials.
 5 It applied Bates numbers to them that are different from the Bates numbers on the
 6 same documents produced to the defense on March 19th.

7 Moreover, in its cover letter of February 15th transmitting the discovery
 8 production, the government did not describe these documents in any specific
 9 fashion or identify them as having come from CFE.⁵ They appear in section 1.I.b.
 10 of the letter, as follows:

11 1.I. Additional documents produced under the Treaty of Cooperation
 12 between the United Mexican States and the United States of America
 13 for Mutual Legal Assistance on February 8, 2011, as follows:

14 . . .

15 b. Various electronic documents, Bates stamped by the Department of
 16 Justice as Lindsey_MX_0006459 to Lindsey_MX_006521

17 *See* Exhibit C, Feb. 15, 2011 letter at p. 2.

20 ⁵ The five pages of spreadsheets, in Spanish, do not bear any identification of
 21 who prepared them or furnished them to the government. The three generic,
 22 informational PowerPoint presentations, also in Spanish, total about 50 slides.
 23 They are background presentations about CFE, electric power transmission and
 24 contracting procedures. The first is entitled “El Abastecimiento en la CFE.” It is
 25 an overview of the electric power supply functions of CFE. The second is called
 26 “Procedimiento de Contratacion Publica en Mexico,” or “Public Procurement
 27 Procedures in Mexico.” It is an overview of the way public contracts are let in
 28 Mexico. The third is “Acerca de CFE,” or “About CFE.” It appears to be an
 overview of the company. Each bears the CFE logo and slogan. None of the
 PowerPoint presentations refers to LMC, Grupo or any of the contracts at issue
 here.

1 In short, these Spanish-language documents produced on February 15th
 2 were misidentified and buried in over hundreds of thousands of other pages of
 3 discovery.⁶ The materials do not indicate that they were obtained by the
 4 prosecutors at recent interviews of CFE representatives, or that the CFE
 5 representatives had prepared the spreadsheets to brief the prosecutors and agents
 6 about LMC-CFE contracts. In addition, since the government withheld the
 7 February 11th Mendoza interview memorandum (even though it had designated
 8 two of the CFE representatives as trial witnesses), the possible significance of the
 9 information in the spreadsheets was hidden.

10 **II. THE DICTATES OF *BRADY* v. *MARYLAND***

11 The dictates of *Brady v. Maryland* 373 U.S. 83 (1963) are clear. If the
 12 government has exculpatory information, it must disclose it promptly. Failure to
 13 do so is a constitutional violation.

14 In the last several years, in hard-fought, high profile cases, the government
 15 has committed what are now well-publicized *Brady* violations.⁷ One of those

16
 17 ⁶ The government's letter states these materials, and thousands of pages of
 18 other documents, were obtained by them under the MLAT on February 8, 2011.
 19 See Exhibit C, Feb. 15, 2011 letter at p. 2. However, the February 11th Mendoza
 20 memorandum indicates that the CFE representatives had prepared the spreadsheets
 21 and generic PowerPoints for that meeting and had brought them to the meeting for
 22 the prosecutors and agents.

23 ⁷ See generally *United States v. Stevens*, No. 08-CR-231 (EGS), 2009 WL
 24 6525926, *1 (D.D.C. Apr. 7, 2009) (granting newly appointed prosecution team's
 25 motion to set aside verdict and dismiss indictment due to government's failure to
 26 produce, until nearly five months after trial, exculpatory notes revealing that key
 27 testimony against the defendant was fabricated, despite repeated requests for the
 28 information by the defense and admonitions by the court to provide such
 materials); *United States v. W.R. Grace, et al.*, No. CR 05-07-M-DWM (D. Mont.),
 Order (Docket No. 1147), pp. 6-14 (government conceded that it violated its
Brady/Giglio obligations by failing timely to disclose to the defense evidence
 pertinent to a key government witness, including email exchanges between that
 witness and a special agent, immunity negotiations with that witness, and other

1 *Brady* violations cases, tried in our courthouse, resulted in the dismissal of murder
2 and racketeering convictions after a jury conviction.⁸

3 In the wake of these *Brady* embarrassments, the DOJ directed the various
4 United States Attorney's Offices to be more pro-active and more attuned to *Brady*
5 obligations.⁹ The new policy required additional vigilance. Unfortunately, the
6 government again seems to have ignored its constitutional obligations. These
7 *Brady* violations, as set forth below, with their attendant prejudice, require
8 dismissal of the FSI. In the alternative, sanctions that restore the defense to the
9 place it would have been had the government complied with its *Brady* obligations
10 must be imposed.

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13 notes reflecting the witness's animus for the defendants and his relationship with
14 the government; violations required (1) continued cross-examination for the
15 defense, (2) no redirect for the government, and (3) a limiting instruction to the
16 jury); *Id.*, Jury Instruction (Docket No. 1150) (informing jury that the government
17 violated its constitutional obligations to the defendants, instructing jury not to
18 consider suspect witness's testimony as to one defendant, and telling jury
19 otherwise to consider witness's testimony with "great skepticism").

20 ⁸ See *United States v. Torres-Ramos, et al.*, No. CR 06-656(A)-SVW (C.D.
21 Cal.), Order (Docket No. 924) (dismissing counts 1 and 2 with prejudice); *Id.*
22 Order (Docket No. 930) (dismissing counts 3 and 4 with prejudice); *Id.* Order
23 (Docket 997) pp. 24-33, 39 (summarizing government's admitted *Brady* violations,
24 which caused it to move to dismiss counts 1-4 in the indictment, for failing to
25 disclose that certain benefits were conferred on two key witnesses, including that:
26 the government would have domestic violence charges dropped against one
27 witness; that the government promised both witnesses would get out of jail early;
28 that the government would help one witness keep his house, in violation of federal
forfeiture laws; that another witness would receive immunity for an unrelated
crime; and that a witness had been promised money for his testimony).

⁹ See David W. Ogden, *DOJ Memorandum for Department Prosecutors: Guidance for Prosecutors Regarding Criminal Discovery*, January 4, 2010, at <http://www.justice.gov/dag/discovery-guidance.html> ("Prosecutors are . . . encouraged to provide discovery broader and more comprehensive than the discovery obligations" under *Brady*.).

1 However, in this case, the latter remedy may no longer exist. A substantial
2 problem has been created by the government “sitting” on crucial *Brady* materials:
3 the late production of this exculpatory information may make use of this critical
4 information at trial impossible. Had the government acted as it should have, by
5 providing this information to the defense when it was received, the defense could
6 have taken steps to secure the evidence. By “sitting” on this *Brady* until the week
7 before trial, the government has effectively deprived the defense of it use. This
8 was a purposeful, serious due process violation requiring dismissal.

9 **A. The *Brady* Violation**

10 This Court is familiar with some of the underlying facts and the
11 government’s allegations. The government claims that LMC, Keith E. Lindsey
12 (“Dr. Lindsey”) and Steve K. Lee (“Mr. Lee”) knowingly, corruptly and willfully
13 paid money to Enrique Aguilar with the intent that he pay it to certain CFE
14 employees to get or retain business. The charged time period is February 2002, to
15 March 2009.

16 As part of this scheme, the government contends that LMC was awarded a
17 series of contracts through corruption and bribery.¹⁰ However, the information
18 provided to the prosecutors and agents on February 11th by CFE representatives
19 establishes that these very contracts were awarded in a manner that is not only
20 regular and ordinary, but that was free from suspicion. CFE can engage in

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22 ¹⁰ Of course, the illogical nature of the government’s bribery theory has been
23 discussed at length in the Motion For Evidentiary Hearing Pursuant to *Franks v.*
24 *Delaware* and the accompanying declarations of Mr. Durkin. No “bribes” were
25 allegedly paid until CFE had granted millions of dollars in contracts to LMC over a
26 period of many years. We now know that those contracts were let in a legitimate,
27 ordinary fashion in which nothing seemed out-of-order to CFE. We also now
28 know that the money supposedly used for the so-called “bribe payments” cannot be
identified as LMC money or traced to it. The failure to disclose these things also
violated *Brady*.

1 contracting by open bid or direct contact. The CFE interview statement just
2 produced shows both are legitimate, common methods to contract. Neither is
3 suspect.¹¹

4 There is no direct evidence of knowledge or corrupt intent. Instead, the
5 government is trying to prove knowledge by connecting various pieces of
6 evidence. These pieces include witnesses that will allegedly say that Mr. Lee and
7 Dr. Lindsey should have known that the direct bid contracts to LMC were a sign
8 that corruption and bribery were afoot.

9 In fact, in a document filed February 28, 2011, *seventeen days after* learning
10 direct contracts are commonplace and that these CFE-LMC contracts were justified
11 and had been authorized, and that LMC's direct bid contracts were correctly
12 awarded, the government argued that evidence to be adduced at trial would be
13 especially incriminating as it showed that LMC's competitor's direct purchase
14 order was highly suspect, and that such awards required a high level approval
15 within CFE. *See* Government's Pretrial Motions (Docket No. 225) (filed under
16 seal). From at least the February 11, 2011 meeting with CFE, the government
17 knew this statement in a motion they filed was *not* true. *See* Exhibit A, Mendoza
18 Memo at ¶ 4.

19 Indeed, the government is so tied to its position that direct orders are
20 evidence of criminality that it has gone so far as to suggest to witnesses that a
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22 ¹¹ As previously discussed, starting in about 2000, LMC was the only company
23 manufacturing and supplying the industry-standard 1070 transmission towers.
24 During the time period charged in the FSI, LMC had no competition. CFE had
25 purchased many of these towers long before Mr. Aguilar became the LMC sales
26 representative and it was happy with them. As a result, LMC was the only bidder
27 on these contracts that went to bid. The other contracts were for spare parts to
28 replenish the supplies purchased earlier. Direct orders of spare parts were
justifiable and legitimate. These orders were all approved by one of 40 regional
CFE committees, not by CFE headquarters or even by a central committee.

1 direct order is “unusual.” *See* Transcript of Sergio Cortez’s Grand Jury Testimony,
 2 date May 5, 2010, p. 72, line 18 through p. 73, line 5 (a copy can be provided to
 3 the Court if requested). Since the CFE representatives directly contradict this
 4 government theory, CFE testimony should have been produced immediately.

5 The prosecutors in this matter have been adamant about their discovery
 6 compliance. Mr. Miller has assured the Court that he has produced every piece of
 7 relevant evidence and every witness statement. Requests by the parties for further
 8 discovery are treated by the government as a bother, something interfering with
 9 their own trial preparations. *See* Exhibit D, Letter from Douglas M. Miller and
 10 Jeffrey Goldberg to defense counsel, dated March 18, 2011.¹² However, the
 11 government has not only *not* complied with its *Brady* obligations, it has
 12 purposefully sought to avoid them. Dismissal is appropriate.

13 This directly contradicts the government’s key assertion that the CFE-LMC
 14 direct order contracts were out of order and that LMC, Dr. Lindsey and Mr. Lee
 15 knew that something was amiss when they got these contracts.
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19 ¹² In a letter dated March 21, 2011, Mr. Goldberg and Mr. Miller brushed aside
 20 objections made in a letter from defense counsel about the government’s failure to
 21 produce the exculpatory information in the Mendoza memorandum until ten days
 22 before trial. *See* Exhibit E, Letter from Douglas M. Miller and Jeffrey Goldberg to
 23 Ms. Levine and Mr. Handzlik, dated March 21, 2011. The government’s response
 24 makes it clear that its failure to produce the February 11th interview memorandum
 25 of the CFE representatives was calculated and deliberate. The government cites to
 26 its (inadequate and deceptive) February 15th discovery disclosure of the Spanish-
 27 language spreadsheets, not identified as from CFE, and generic CFE PowerPoints
 28 as having fully discharged its obligations. The government says that, as a result,
 the it will not discuss this subject matter with the defense anymore. In writing this
 dismissive letter, Mr. Goldberg and Mr. Miller must have overlooked the fact that,
 also on February 15th, they had designated two of the CFE representatives as trial
 witness.

1 **B. The Prejudice**

2 It is now one week before trial. The defense intends to begin trial as
3 scheduled. The devastating exculpatory information furnished directly to the
4 prosecutors and agents by high-level representatives of CFE on February 11th,
5 may now be beyond the reach of the defense. This exculpatory information has
6 been known to the government for five and one-half weeks. It is admissible
7 through CFE witnesses – Mexican citizens over whom we have no right of process.

8 While two of these individuals are listed on the government's witness list,
9 that is no assurance they will be present for trial and have the appropriate
10 documents with them to support their testimony.

11 Had the defense had this information in a timely fashion, it could have
12 attempted to depose the witness under Federal Rule of Criminal Procedure 15,
13 sought other evidence to corroborate this information, and followed through with
14 our own investigation. There is no sound reason and no justification for the
15 government's suppression of this favorable evidence.

16 **C. The Remedy**

17 The remedy for a *Brady* violation of this magnitude is dismissal. If the
18 defendants are now unable to secure a fair trial due to the government's
19 misfeasance and malfeasance, dismissal is the only appropriate remedy.

20 Alternatively, the Court could seek to fashion a remedy that protects the
21 defendants' right to a fair trial while penalizing the government in an appropriate
22 fashion. By way of example, the Court could require the government stipulate to
23 the facts to which the CFE witness would have testified in a competent and
24 authoritative fashion, based upon their analysis of the underlying CFE records,
25 namely, that:

26 1) 34 of the 35 CFE-LMC contracts in issue on this case were compliant
27 with CFE contracting policies;

2) One contract in the same time period had a discrepancy that was not related to the allegations in the FSI and not a problem of LMC's doing;

3) All of CFE's 25 direct order contracts with LMC during the relevant period were justified and complied with CFE's regulations;

4) One of 40 CFE Regional Committees authorized each LMC direct order contracts;

5) The LMC contracts appeared normal on their face and did not trigger any suspicions in CFE; and

6) Nestor Moreno was an employee in good standing at CFE until September 2010.

Finally, consistent with *W.R. Grace*, the jury should be instructed that the prosecution withheld exculpatory evidence from the defense, contrary to its obligations.

III. CONCLUSION

Based on the foregoing, the motion should be granted.

DATED: March 22, 2011

Respectfully submitted,

JANET I. LEVINE
CROWELL & MORING LLP

/s/ Janet I. Levine
By: JANET I. LEVINE
Attorney for Defendant
Steve K. Lee

DATED: March 22, 2011

JAN L. HANDZLIK
GREENBERG TRAURIG LLP

/s/ Jan L. Handzlik
By: JAN L. HANDZLIK
Attorneys for Defendants
Lindsey Manufacturing Company and
Keith E. Lindsey

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California, at Crowell & Moring LLP at 515 S. Flower Street, 40th Floor, Los Angeles, California 90071. I am over the age of 18 and not a party to the within action.

On **March 22, 2011**, I served the foregoing document described as **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS THE FIRST SUPERSEDING INDICTMENT FOR VIOLATIONS OF *BRADY V. MARYLAND* OR, IN THE ALTERNATIVE, FOR SANCTIONS; EXHIBITS** on the parties in this action by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies the following:

Douglas M. Miller (Assistant United States Attorney)
Email: doug.miller@usdoj.gov

Nicola J. Mrazek (United States Department of Justice Senior Trial Attorney)
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1 I declare under penalty of perjury under the laws of the State of California
2 that the above is true and correct.

3 Executed on **March 22, 2011**, at Los Angeles, California.

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5 /s/Kristen Savage Garcia
6 KRISTEN SAVAGE GARCIA
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